



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

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OFFICE OF  
SOLID WASTE AND EMERGENCY  
RESPONSE

**MEMORANDUM**

SUBJECT: Interim Approaches for Regional Relations with State  
Voluntary Cleanup Programs

FROM: Elliott P. Laws  
Assistant Administrator  
Office of Solid Waste and Emergency Response  
  
Steven A. Herman  
Assistant Administrator  
Office of Enforcement and Compliance Assurance

TO: Superfund National Policy Managers

**BACKGROUND**

EPA has been working closely with States over the past two years to develop partnerships to encourage cleanups of non-NPL hazardous substance-contaminated sites, such as brownfields. In the FY 1997 appropriation, funding was provided to the Agency to provide assistance to States in the arena of capacity-building for State voluntary cleanup programs. This was provided to the Agency to complement EPA's and States' efforts addressing cleanup of brownfields properties.

**PURPOSE**

This memorandum sets out the baseline criteria which EPA will employ to evaluate the adequacy of State voluntary cleanup programs (attached). EPA will request States to address these criteria in the context of their application for funding their voluntary cleanup programs or their efforts to build such a program. This information will also be reviewed in the context of negotiating Memoranda of Agreement (MOAs) which can constitute a planning mechanism for division of labor at sites between EPA and the States. Funding of state capacity-building or entering into MOAs in no way changes or alters EPA's current enforcement authorities under Superfund.



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EPA continues to encourage Regions to expand partnerships with State voluntary cleanup programs. During the negotiations of these agreements, the EPA Regions should discuss:

- State capabilities
- Programmatic Areas
- Types of sites to be included (e.g. whether or not to exclude NPL-caliber sites.)\*

EPA does not intend that these MOAs constitute no-action assurances for any specific site by EPA. For resource planning purposes, EPA would plan to assume that State activities would be sufficient and generally EPA does not anticipate taking removal or remedial action at sites involved in approved State Voluntary Cleanup Program, unless EPA determines that there may be an imminent and substantial endangerment to the public health, welfare, or the environment.

EPA Headquarters has developed language in this regard to be included in MOAs negotiated with States addressing this issue (attached). Regions are encouraged to work with Headquarters Office of Enforcement and Compliance Assurance (OECA) while developing their MOAs. Should a Region choose to deviate from the attached language, concurrence from OECA on language regarding EPA's enforcement authorities will be required.

Should you have additional questions or need clarification of these issues, please contact Linda Garczynski (202-260-1223) or Linda Boornazian (202-564-5104).

#### Attachments

cc: Lois Schiffer, DOJ  
Timothy Fields, OSWER  
Sylvia Lowrance, OECA  
Steve Luftig, OSWER  
Barry Breen, OECA  
Linda Garczynski, OSWER  
Linda Boornazian, OECA  
Lisa Friedman, OGC  
Earl Salo, OGC  
Ann McDonough, OSWER  
Lori Boughton, OECA  
Leslie Kaschak OECA

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\* It may be appropriate, in this context to discuss the State's approach to NPL listing in general.

## SIX BASELINE CRITERIA FOR VOLUNTARY CLEANUP PROGRAMS

The Region will review all relevant documents concerning the Voluntary Cleanup Program to determine if the State program meets the following baseline criteria:

1. Provides opportunities for meaningful community involvement
2. Ensures that voluntary response actions are protective of human health and the environment
3. Has adequate resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from the State agency responsible for the Voluntary Cleanup Program
4. Provides mechanisms for the written approval of response action plans and a certification or similar documentation indicating that the response actions are complete
5. Provides adequate oversight to ensure that voluntary response actions are conducted in such a manner to assure protection of human health and the environment as described above
6. Shows the capability, through enforcement or other authorities, of ensuring completion of response actions if the volunteering party(ies) conducting the response action fail(s) or refuse(s) to complete the necessary response actions, including operation and maintenance or long-term monitoring activities

## ATTACHMENT 2

### MODEL LANGUAGE FOR INCLUSION IN STATE VOLUNTARY CLEANUP PROGRAM MEMORANDA OF AGREEMENT

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“Although nothing in this MOA constitutes a release from liability under applicable Federal law, generally EPA does not anticipate taking removal or remedial action at sites involved in this Voluntary Cleanup Program unless EPA determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment.”